HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.21025 OF 1994

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Between:

Bharat Dynamics Limited,

Bhanur, Medak District,

Rep., by its Additional General Manager (P&A)

……Petitioner

And

Labour Officer, Medak District at Patancheru

and another

……Respondents

:: ORDER ::

Counsel for the Petitioner : Ms. V. Uma Devi for

Shri K. Srinivasa Murthy

Counsel for Respondent Nos.3 to 34 : Shri Nuthalapati

Krishnamurthy for

Shri Prattipati

Venkateswarlu

Dated: 05-12-2006

This petition is directed against order dated 31-08-1994 vide which the Authority under Minimum Wages Act-cum-Assistant Commissioner of Labour, Patancheru (hereinafter described as, 'the Prescribed Authority') directed the petitioner to pay minimum wages to the employees of the canteen along with compensation.

The petitioner is a Government of India undertaking. It is engaged in the manufacture of missiles and other related equipments and devices. In 1993, Labour Officer, Medak filed two petitions before the Prescribed Authority for issue of a direction to pay difference of minimum wages to the employees as per G.O.Ms.No.55, dated 8-4-1991 for the periods from 13-4-1991 to 30-4-1992 and 1-10-1991 to 31-3-1992 respectively. The officers of the petitioner, who were impleaded as parties, contested the application by asserting that the workers were not employed in the establishment and, in any case, they are not entitled to the benefit of G.O.Ms.No. 55 dated 08-04-1991 because Central Government is the appropriate government for the establishment, and as such the direction given by the State Government is not applicable to them. It was further averred that the employees on whose behalf the petitions were filed by the Labour Officer were the workers of Mr.Kishore of M/s.Jayakrishna Enterprises, catering specialist, who was providing canteen services to the establishment.

On the pleadings of the parties, the Prescribed Authority framed the following issues:

> " 1) Whether State Govt. is appropriate Government for the OP's establishment?
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> 2) Whether the G.O.Ms.55, dt. 8.4.91 issued by the Government of A.P., is applicable to the canteen provided in the OP's factory?
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> 3) Whether the delay in filing the claim petition No.MWMP-1/93 can be condoned?
>
> 4) Whether the employees in the two claims are entitled for any difference wages?"

The Prescribed Authority referred to the definition of appropriate government under Section 2 (b) of Minimum Wages Act, 1948 (for short, 'the 1948 Act') and rejected the plea raised on behalf of the petitioner that the State Government is not the appropriate government by recording the following observations:

"The OP's Factory is a Public Sector Enterprises under the Central Government and it manufactures Missiles for the Defence Ministry. The Industrial Canteen was established as a statutory requirement under the Factories Act, for supplying foodstuffs to the workers. This canteen was given to a contractor by the OP on certain terms and conditions. But this is not carried on by or under the Central Government or any Corporation established by Central Government. The OP has filed to prove that for them Central Government is appropriate Government as defined in
S-2(b) (i). Therefore, I hold that the State Government is appropriate Government for the OP's establishment and its industrial canteen run under contract system. Accordingly, the G.O.Ms.No.55, dt. 8.4.91 issued by the State Government is applicable to the canteen existing in Ops factory. The OP has stated that they have challenged the said G.O. in the High Court and it is sub-judice to pursue the matter before this authority. In the absence of any stay order granted by the Hon'ble High Court against the said G.O. it is within the limits of the applicant to file these cases and pursue them before the authority. The employees working in the industrial canteen are covered by the said G.O. and are entitled to thewages fixed as per their categories".

The Prescribed Authority then considered the factual matrix of the case and evidence of the parties and concluded that the employer had failed to pay minimum wages to the employees. Accordingly, the petitions filed by the Labour Officer were allowed and a direction was issued for payment of minimum wages to the workers along with compensation in lieu of belated payment of minimum wages prescribed by the State Government.

Ms. V. Uma Devi, learned counsel for the petitioner relied on order dated 27-11-1996 passed by the Division Bench of this Court in Writ Petition No. 8015 of 1992, **B. Venkata Ramana Reddy and 31 others v. the Chairman and Managing Director, Bharath Dynamics Limited, Kanchanbagh, Hyderabad**, judgment dated
13-08-2003 of the Supreme Court in Civil Appeal No. 5992 of 1997 and batch, **Mishra Dhatu Nigam Limited etc., etc., v. M. Venkataiah and others** and memorandum of settlement dated 29-10-2004 entered into between the Management of Bharat Dynamics Limited and the recognized union i.e. Bharat Dynamis Employees Union under Section 12 (3) read with Section 18 (3) of the Industrial Disputes Act, 1947 and argued that in view of the adjudication made by the Division Bench and settlement dated 29-10-2004, the finding recorded by the Prescribed Authority that the State Government was the appropriate government should be declared as vitiated by an error of law and the order under challenge should be set aside. She further argued that even if the view expressed by the Prescribed Authority on the interpretation of Section 2(b) of the 1948 Act is held to be correct, the impugned order should be set aside to the extent of award of compensation.

I have considered the submissions of the learned counsel, but have not felt persuaded to agree with her. A careful reading of order dated 27-11-1996 passed in Writ Petition No.8015 of 1992 – B. Venkata Ramana Reddy and others v. The Chairman and Managing Director, Bharat Dynamics Ltd., shows that the Division Bench granted relief to the petitioners by relying on the judgment of the same date

passed in Writ Appeal No.385 of 1996 – Karri Pothu Raju and others v. The National Thermal Power Corporation Ltd. and others. In the latter case, the Division Bench referred to the judgments of the Supreme Court in **Parimal Chandra Raha v. Life Insurance Corporation of India** and **Employees In Relation To The Management of Reserve Bank of India v. Their Workmen** and held that the employees of the canteen were entitled to be treated as employees of the principal employer. For

the sake of convenient reference, the relevant portions of the judgment of the Division Bench in Writ Appeal No.385 of 1996 are reproduced below:

> "In PARIMAL CHANDRA RAHA case (3 supra), the Supreme Court has stated –
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> (i) Where, as under the provision of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management.
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> (ii) Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the canteen becomes a part of the establishment and the workers working in the canteen , the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment.
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> (iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award etc., it may be inferred from the circumstances, and the provision of the canteen may be held to have become a part of the service conditions of the employees. Whether the provision for canteen services has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.
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> Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management.
>
> (iv) Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among others, on the nature of the service /facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing, more, the number of employees employed in the establishment and the number of employees who avail of the service , the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising

and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc."

In EMPLOYEES IN RELATION TO THE MANAGEMENT OF RESERVE BANK OF INDIA VS. THEIR WORKMEN {1996 (2) SCALE 708}, the Supreme Court has mentioned particularly the view in M.M.R. KHAN v. UNION OF INDIA {AIR 1990 SC 937} and taken notice of the division of the canteens into three categories stating as follows:

"1) Statutory Canteens which are required to be provided compulsorily in view of Section 46 of the Factories Act, 1948;

2) Non-statutory Recognised Canteens – such canteens are established with the prior approval and recognition of the Railway Board as per the procedure detailed in the Railway Establishment Manual; and

3) Non-statutory Non-recognised Canteens – these are canteens established without the prior approval or recognition of the Railway Board."

Speaking on **Parimal Chandra Raha**'s case (3 supra), and after extracting the above passage, the Supreme Court ahs commented upon the contentions of the learned counsel for the parties which were confined only to propositions 3 and 4 in these words –

> "Counsel for the appellant Mrs. Salve submitted that propositions Nos. 3 and 4 contained in paragraph 27 of the judgment are very wide and require reconsideration and appropriate modification, whereas Mr. Tarkunde, Counsel for respondents submitted that propositions Nos. 3 and 4 lay down the law correctly. It is unnecessary, on the facts of this case, to consider to what extent propositions Nos. 3 and 4 require to be clarified or modified, since in this case the Tribunal has proceeded only on the basis that the instant case clearly falls within the ratio laid down by this Court in M. M. R. Khan's case (AIR 1990 SC 937) (supra), which we have held is a totally wrong perspective."

It is clear thus from the above that the two propositions emerging in **Parimal Chandra Raha**'s case (3 supra) i.e., (1) Where, as under the provision of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management and (2) Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the canteen becomes a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment, has found approval and has been consistently held to be the correct

proposition and view of law. A Bench of this Court in Writ Appeal No.445 of 1996 dated 20-6-1996 has observed as follows:

> "The argument, however, that the work of canteen was entrusted to a contractor, it appears, is developed without taking notice of Section 46 of the Factories Act and Rules 65 to 71 of the Andhra Pradesh Factories Rules, 1950 which enjoin the occupier of every factory notified by the State Government and wherein more than 250 workers are ordinarily employed to provide in or near the factory an adequate canteen according to the standards prescribed in the rules and provide food to the workmen at subsidized rate."

From the facts of the instant case, it can reasonably be inferred that the case of the petitioner – appellants falls in Category – I Canteen as pointed out in **Parimal Chandra Raha**'s case (3 supra) and the rules aforementioned make it obligatory upon the management to provide canteen for the workers and to manage it with the help of a Managing Committee, if so advised, and not through a contractor at all. Introduction of a contractor in such a situation only to place the canteen management and the employees in the canteen under the control of the contractor is violative of the rules afore-mentioned and is against the spirit behind the Section 46 of the Factories Act."

In **Mishra Dhatu Nigam Limited etc. etc. v. M. Venkataiah and others** (supra), the Supreme Court examined the correctness of the aforementioned judgment of this Court and upheld the same.

There is nothing in the two judgments from which it can be inferred that the Court had directed the canteen employees to be treated as employees of the establishment with retrospective effect. If that was so, there was no occasion for the management to have entered into settlement with the employees union for conferring them the status of the employees with prospective effect.

In view of the above, I do not find any illegality in the direction given by the Prescribed Authority for payment of minimum wages to the workers in terms of G.O.Ms.No.55, dated 8-4-1991.

The argument of Ms.Uma Devi that the award of compensation to the workers should be set aside also merits rejection. Admittedly, the establishment had failed to pay wages to the workers in accordance with the provisions of the 1948 Act. This naturally resulted in denial of due wages to the workers. Therefore, the discretion exercised by the Prescribed Authority to order payment of compensation cannot be characterized as arbitrary or unreasonable.

No other point has been argued.

In the result, the writ petition is dismissed.

G.S. SINGHVI, CJ

05-12-2006

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